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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

INDIGENOUS ISSUES

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 1999]

GE.99-11208 (E)

1. Violations of the human rights of indigenous peoples around the world continue to be rampant, brutal and pervasive. In most cases, these violations are ignored and, in many cases, are directly perpetrated by the States which were founded upon our traditional lands, the Members of the United Nations themselves. In the current era of globalization, multinational corporations are imposing massive-scale extraction and commercialization of the natural resources from indigenous peoples' lands and ecosystems. Once again, there exists little or no redress for indigenous peoples within State systems for the resulting violations of human rights, including forced removals and the contamination of homelands and communities.

2. A basic principle of international law is that human rights must be uniformly and universally applied. Without the equal application of international laws and standards, the fundamental integrity of international standard-setting itself is called into question.

3. Héctor Gros Espiell, the Special Rapporteur on the right to self-determination, stated in the conclusions to his 1979 report (United Nations publication, Sales No. E.79.XIV.5), that the right to self-determination is a fundamental human right, the enjoyment of which is an essential precondition for the enjoyment of any other human rights or fundamental freedoms.

4. But indigenous peoples are forced to continue to struggle to achieve the recognition of the basic and fundamental right to self-determination, both in day-to-day struggles for survival within the existing States, and at the United Nations itself. We are faced with defending this most fundamental and basic right contained in the current text of the draft United Nations declaration on the rights of indigenous peoples even as we meet with States to discuss this declaration at the sessions of the open-ended inter-sessional working group established for this purpose by the Commission.

5. During these sessions, including the most recent one which concluded on 11 December 1998, we have been struck by the intractable position of some States, notably the United States of America, as they attempt at every opportunity to justify excluding indigenous peoples from the enjoyment of this basic and inalienable right which has nonetheless been enshrined in international law as the right of all peoples.

6. The United States, in particular, during the last inter-sessional working group session made continual attempts to challenge the applicability to indigenous peoples of the right of self-determination by attempting to redefine us as something other than "peoples" in the text. Options which the United States delegation put forth included a proposal, echoed by the Japanese delegation, that the term "indigenous peoples" in the text should be changed to "persons belonging to indigenous groups". This language may be acceptable terminology in addressing the rights of minorities, but has no legal basis, and no precedent in international law referring to the rights of peoples.

7. Another wholly objectionable option which the United States presented during the session was to place an asterisk next to the word "peoples" throughout the text, with a qualifying statement attached stating that "the use of the term peoples in the declaration has no implication regarding the

right of self-determination or any other rights which may attach to the term under international law". The United States delegation noted that a similar statement is already contained in ILO Convention No. 169, as well as in the current draft of the Organization of American States proposed Declaration on the Rights of Indigenous Peoples.

8. In fact, the proposed American Declaration seeks to qualify the word "peoples" to the extent that it would have no legal significance internationally. Article 1.3 states that "the use of the term 'peoples' in this instrument shall not be construed as having any implication with respect to any other rights that might be attached to that term under international law".

9. However, the internationally recognized right of self-determination of all peoples is defined and described in several instruments of the United Nations, including common article 1 of the two International Covenants on Human Rights. The great majority of member States of the OAS are already bound to observe and respect this most fundamental freedom by virtue of their ratification of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Even the United States is bound, even though it has signed and ratified only the former and signed but not ratified the latter.

10. The proposed OAS Declaration cites Convention No. 169 in its perambular language as "progress", but fails to mention the draft United Nations declaration as progress in this regard. It should be noted that indigenous peoples have serious questions regarding the legitimacy and purpose of the OAS Declaration now being considered by the OAS General Assembly. It was developed without the input or even the knowledge of most indigenous peoples' organizations in the region, who were only later, and sporadically at best, asked for their response. The United States-endorsed type of wording contained in the proposed OAS text qualifying and limiting rights, specifically the right to self-determination, for indigenous peoples under international law has persisted despite the clear and consistent objections of the indigenous peoples' organizations who have commented on the OAS text to date.

11. This raises serious questions about whether the actual intent of this effort was, from its inception, to undermine the recognition of the right of self-determination for indigenous peoples contained in article 3 of the draft United Nations declaration. Since the OAS members are also members of the United Nations, questions remain as to why there was a need to develop, behind closed doors, an alternative text which undermines, qualifies, limits, and in fact directly contradicts the recognition of the most basic of rights contained in the draft United Nations declaration, specifically the right to self-determination. It is important to note in this regard that the United Nations process, unlike the OAS process, continues to include indigenous peoples.

12. Despite the stubbornly discriminatory position of some States regarding the universal application of this most basic right, the open discussions on the right of self-determination in the inter-sessional working group as well

as in international forums such as the recent UNESCO international expert meeting on the implementation of the right to self-determination held in Barcelona, Spain, from 21 to 27 November 1998 are indications of progress.

13. Such discussions, which include the effective participation of indigenous peoples, indicate a growing recognition within the international community that the concept of self-determination is capable of broadening and evolving in its application. The position of many of the States can be seen to be evolving as well in this regard. For this reason we continue to be encouraged.

14. We continue to observe that the universal application of self-determination as the recognized right of all peoples under international law is an essential underpinning for the peaceful coexistence of peoples based on mutual respect, rather than the brutality of colonial domination and disenfranchisement that has characterized the past 500 years of indigenous peoples' existence.

15. Along these lines, the conclusions of the UNESCO expert meeting stated that "The peaceful implementation of the right to self-determination in its broad sense is a key contribution to the prevention and resolution of conflicts, especially those which involve contending interests of existing states and peoples, including indigenous peoples ...".

16. In the name of justice, human rights, peaceful coexistence and the fundamental principle of non-discrimination, the International Indian Treaty Council once again urges the members of the Commission on Human Rights to insure that the human rights of and equality for indigenous peoples are fully recognized and protected at long last by adopting without delay the current text of article 3 of the draft declaration, affirming that "Indigenous Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". We ask this for our children, and for yours.

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